IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.586 OF 2005

Hrishikesh Sunil Tiwari ...Applicant.

V/s

State of Maharashtra
and Anr. ...Respondents.

Mr. Ghanshyam Mishra for the applicant.
Mr. A.S. Shitole, APP for the State.

CORAM: V.M.KANADE,J.

DATE: 31st March, 2005

P.C.:

1. Heard the learned Counsel for the applicant and the learned APP for the State.

2. Applicant is an original accused in Criminal Complaint which was registered by the Mulund Police Station vide C.R. No.552/2000 under section 452, 302 of the Indian Penal Code. Applicant was arrested on 26/10/2000 by the Mulund Police Station and later on charge-sheet was filed.

3. It is submitted by the learned Counsel appearing on behalf of the applicant that at the time of his arrest, he was 17 years and 6 months old and that his date of birth is 24/4/1983. However, the police have shown his age as 19 years. It is submitted that under

the Juvenile Justice (Care and Protection of Children) Act, 2000 (No.56 of 2000), after the amendment, the age of juvenile has been increased from 16 years to 18 years. He, therefore, preferred an application that as per the amended Act which came into force on 1/4/2001, the case of the applicant should be forwarded to the Juvenile Court. However, his application was rejected by the Sessions Court. The learned Counsel appearing for the applicant has relied upon various judgments of this Court and other High Courts. Division Bench of this Court in the case of Kamlesh Shyam Lal Saroj Vs. The State of Maharashtra by order dated 14/6/2004 (Coram: S.S. Parkar & Smt. Ranjana Desai, JJ) has held that if the trial is pending on the date when the new Act came into force, the amended Act will be applicable to such pending cases. Similar view has been taken by the Rajasthan High Court in the case of Mahendra Singh Vs. State of Rajasthan reported in 2004 CRI.L.J. 1606 and in the case of Rafiq Khan Vs. State of Rajasthan reported in 2004(2) Crimes 106. In the case of Mahendra Singh (supra) a reference is made to the three Judge Bench of the Hon'ble Supreme Court in the case of Umesh Chandra Vs. State of Rajsthan in which it was held that crucial date to determine whether the accused is a juvenile or not, is the date on which the offence

was committed.

4. In my view, Trial Court has not taken into consideration the ratio laid down by the Supreme Court as also this Court and other High Courts and has proceeded on the footing that since the amended Act came into force from 1/4/2001, the provisions of amended Act are not applicable to the applicant. In my view, Trial Court has not properly appreciated the judgments which are cited before it. The impugned order is, therefore set aside. The matter is remanded to the trial court. The Sessions Court to reconsider the application after taking into consideration the judgments of the Supreme Court and this Court.

5. With the above directions, Criminal Application No.586 of 2005 is allowed. Trial Court to decide the application as expeditiously as possible and in any case within a period of six months after permitting the applicant to lead evidence if required.

V.M. KANADE, J.